

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# SENATE BILL 1225

AN ACT

AMENDING SECTIONS 38-747, 38-769, 38-770 AND 38-775, ARIZONA REVISED  
STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-747, Arizona Revised Statutes, is amended to  
3 read:

4 38-747. Purchase of credited service; payment; limitations;  
5 definitions

6 A. A member who purchases credited service pursuant to section 38-738,  
7 38-742, 38-743, 38-744, 38-745 or 38-922 shall either:

8 1. Make payments directly to ASRS as provided in subsection H of this  
9 section.

10 2. Elect to have the member's employer make payments as provided in  
11 subsection B of this section.

12 B. A member may elect to have the member's employer make payments for  
13 all or any portion of the amounts payable for the member's purchase of  
14 credited service pursuant to the sections prescribed in subsection A of this  
15 section through a salary reduction program in accordance with the following:

16 1. The amounts paid pursuant to a salary reduction program are in lieu  
17 of contributions by the electing member. The electing member's salary or  
18 other compensation shall be reduced by the amount paid by the employer  
19 pursuant to this subsection. For the purposes of this paragraph, "other  
20 compensation" includes a member's termination pay.

21 2. The member shall make an election pursuant to this subsection at  
22 any time on or after the date the member elects to purchase credited service  
23 pursuant to the sections prescribed in subsection A of this section and  
24 before the member's termination of employment. The election shall specify  
25 the number of payroll periods that deductions will be made from the member's  
26 compensation and the dollar amount of deductions for each payroll period  
27 during the specified number of payroll periods. In the case of an election  
28 to utilize all or any part of the member's termination pay to purchase  
29 credited service, the member's election shall be made at least three full  
30 calendar months before the date of the member's termination of employment and  
31 entitlement to receive the termination pay. After an election is made  
32 pursuant to this subsection, the election is binding on and irrevocable for  
33 the member and the member's employer during the member's remaining period of  
34 current employment. After a member makes an irrevocable election pursuant to  
35 this subsection, the member does not have the option of choosing to receive  
36 the contributed amounts directly. For the purposes of this paragraph,  
37 "termination pay" means any lump sum that is paid at the member's termination  
38 of employment for accrued vacation, sick leave or overtime pay.

39 3. A member who makes an irrevocable election pursuant to this  
40 subsection to have the member's employer make payments for less than all of  
41 the amounts payable for the member's purchase of credited service may  
42 irrevocably elect to have the member's employer make payments for all or any  
43 portion of the remaining amounts payable for the member's purchase of  
44 credited service. A member who makes one or more irrevocable elections  
45 pursuant to this subsection may also make other contributions to ASRS

1 pursuant to subsection H of this section to the extent of any remaining  
2 amounts payable for which the member has not made an election pursuant to  
3 this subsection. An additional election or contribution with respect to a  
4 portion of the amounts payable for the member's purchase of credited service  
5 does not alter, amend or revoke an irrevocable election already made pursuant  
6 to this subsection for any other portion of the amounts payable for the  
7 member's purchase of credited service.

8 4. If on termination of the member's employment with an ASRS employer  
9 all amounts have not been paid to ASRS pursuant to the member's irrevocable  
10 election pursuant to this subsection, the member may pay ASRS, within thirty  
11 days after the member's termination of employment and subject to other  
12 limitations prescribed in this section, all or any portion of the unpaid  
13 amounts as provided in subsection H of this section. These payments do not  
14 alter, amend or revoke any irrevocable election already made pursuant to this  
15 subsection with respect to any amount to be paid by the member's employer  
16 while the member is employed by the member's employer.

17 5. Amounts paid by an employer pursuant to this subsection shall be  
18 treated as employer contributions for the purpose of determining tax  
19 treatment under the Internal Revenue Code. The effective date of employer  
20 payments pursuant to this subsection shall not be before the date ASRS  
21 receives notification from the United States internal revenue service that  
22 pursuant to section 414(h)(2) of the Internal Revenue Code the amounts paid  
23 by an employer pursuant to this subsection will not be included in the  
24 member's gross income for income tax purposes until those amounts are  
25 distributed by refund or retirement benefit payments.

26 6. Unless otherwise provided, member contributions paid by an employer  
27 pursuant to this subsection are treated for all other purposes under ASRS in  
28 the same manner and to the same extent as member contributions that are not  
29 paid by an employer pursuant to this subsection. ASRS shall not grant  
30 credited service for contributions made pursuant to this subsection until  
31 those contributions are received by ASRS. ASRS may assess interest or  
32 administrative charges attributable to any salary reduction election made  
33 pursuant to this subsection. The interest or administrative charges shall be  
34 added to the amount of contributions that is made to ASRS by the member each  
35 payroll period and that is paid by the member's employer. The interest or  
36 administrative charges shall not be treated as member contributions for any  
37 purposes under this article and a member or a member's beneficiary does not  
38 have a right to the return of the interest or administrative charges pursuant  
39 to any other provision of this article. Interest assessed pursuant to this  
40 subsection shall be at the rate specified by the board pursuant to section  
41 38-711, paragraph 2.

42 7. If a member transfers employment from one participating employer  
43 with which the member has made an irrevocable election pursuant to this  
44 subsection to another participating employer, the member and the successor

1 participating employer shall complete the terms of the irrevocable election  
2 that the member made with the original participating employer.

3 C. A member who elects before July 1, 1999 to receive retirement  
4 benefits based on section 38-771, subsection C, paragraph 2 or a member who  
5 elects to make contributions to ASRS pursuant to section 38-771.01,  
6 subsection F, paragraph 4 shall either make the member's additional  
7 contributions required pursuant to section 38-771, subsection E or allowed  
8 pursuant to section 38-771.01, subsection F, paragraph 4 directly to ASRS as  
9 provided in subsection H of this section or shall elect to have the member's  
10 employer make payments for those additional contributions as provided in  
11 subsection D of this section. A member who elected to be covered or who was  
12 deemed to be covered by section 38-771 on or before December 31, 1995 or who  
13 elects to make member contributions pursuant to section 38-771.01, subsection  
14 F, paragraph 3 is deemed to have made an irrevocable election pursuant to  
15 subsection D of this section to make the member's contributions to ASRS that  
16 are required by section 38-771, subsection D or allowed by section 38-771.01,  
17 subsection F, paragraph 3.

18 D. Any member contributions that are required by section 38-771,  
19 subsection D or that are allowed pursuant to section 38-771.01, subsection F,  
20 paragraph 3 are deemed to be made by the member to ASRS through a salary  
21 reduction program in accordance with the following:

22 1. A member may make member contributions pursuant to section 38-771,  
23 subsection E or section 38-771.01, subsection F, paragraph 4 through a salary  
24 reduction program elected pursuant to this subsection. If a member makes an  
25 irrevocable election pursuant to this subsection before July 1, 1999 to have  
26 the member's employer make payments for additional contributions pursuant to  
27 section 38-771, subsection E, the election continues in effect from and after  
28 June 30, 1999 and shall not be revoked, amended or altered by any election  
29 made pursuant to section 38-771.01 or otherwise. The amounts paid pursuant  
30 to a salary reduction program are in lieu of contributions by the electing  
31 member. The member's salary or other compensation shall be reduced by the  
32 amount paid by the employer pursuant to this subsection.

33 2. Before a member's termination of employment, the member may make an  
34 election pursuant to this subsection at any time after the date the member  
35 elects to receive retirement benefits based on section 38-771, subsection C,  
36 paragraph 2 but before July 1, 1999 or at any time after the member elects to  
37 make member contributions pursuant to section 38-771.01, subsection F,  
38 paragraph 4. The election shall specify the number of payroll periods that  
39 deductions will be made from the member's compensation and the dollar amount  
40 of deductions for each payroll period during the specified number of payroll  
41 periods. After an election is made pursuant to this subsection, the election  
42 is binding on and irrevocable for the member and the member's employer during  
43 the member's remaining period of employment.

44 3. After a member makes or is deemed to have made an irrevocable  
45 election pursuant to this subsection, the member does not have the option of

1 choosing to receive the contributed amounts directly. A member who makes an  
 2 irrevocable election pursuant to this subsection to have the member's  
 3 employer make payments for less than all of the amounts payable for the  
 4 member's additional contributions allowed by section 38-771.01, subsection F,  
 5 paragraph 4 may irrevocably elect to have the member's employer make payments  
 6 for all or any portion of the remaining amounts payable for the member's  
 7 additional contributions. A member who makes one or more irrevocable  
 8 elections pursuant to this subsection may also make other contributions to  
 9 ASRS pursuant to section 38-771.01, subsection F, paragraph 4 or pursuant to  
 10 subsection H of this section to the extent of any remaining amounts payable  
 11 for which the member has not made an election pursuant to this subsection.  
 12 An additional election or contribution with respect to a portion of the  
 13 amounts payable for the member's additional contributions pursuant to section  
 14 38-771.01, subsection F, paragraph 4 does not alter, amend or revoke an  
 15 irrevocable election already made pursuant to this subsection for any other  
 16 portion of the amounts payable for the member's additional contributions  
 17 allowed by section 38-771.01, subsection F, paragraph 4.

18 4. If on termination of the member's employment all amounts have not  
 19 been paid to ASRS pursuant to the member's irrevocable election pursuant to  
 20 this subsection, the member may pay ASRS, within thirty days after the  
 21 member's termination of employment and subject to other limitations  
 22 prescribed in this section, all or any portion of the unpaid amounts as  
 23 provided in subsection H of this section. These payments do not alter, amend  
 24 or revoke any irrevocable election already made pursuant to this subsection  
 25 with respect to any amount to be paid by the member's employer while the  
 26 member is employed by the member's employer.

27 5. Amounts paid by an employer pursuant to this subsection shall be  
 28 treated as employer contributions for the purpose of determining tax  
 29 treatment under the Internal Revenue Code. The effective date of employer  
 30 payments pursuant to this subsection shall not be before the date ASRS  
 31 receives notification from the United States internal revenue service that  
 32 pursuant to section 414(h)(2) of the Internal Revenue Code the amounts paid  
 33 by an employer pursuant to this subsection will not be included in the  
 34 member's gross income for income tax purposes until those amounts are  
 35 distributed by refund or retirement benefit payments.

36 6. Unless otherwise provided, member contributions paid by an employer  
 37 pursuant to this subsection are treated for all other purposes under ASRS in  
 38 the same manner and to the same extent as member contributions that are not  
 39 paid by an employer pursuant to this subsection.

40 7. If a member transfers employment from one participating employer  
 41 with which the member has made an irrevocable election pursuant to this  
 42 subsection to another participating employer, the member and the successor  
 43 participating employer shall complete the terms of the irrevocable election  
 44 that the member made with the original participating employer.

1 E. The following limits apply to contributions to ASRS:

2 1. Except to the extent paragraphs 2 and 3 of this subsection apply to  
3 certain contributions made by a member to ASRS and to the extent permitted  
4 under section 414(v) of the Internal Revenue Code, if applicable, in any one  
5 limitation year, the annual additions contributed or allocated to ASRS for or  
6 on behalf of a member shall not exceed the lesser of either:

7 (a) Forty thousand dollars or a larger amount that is prescribed by  
8 the board and that is due to any cost of living adjustment announced by the  
9 United States secretary of the treasury pursuant to section 415(d) of the  
10 Internal Revenue Code. The board shall increase the amount prescribed by  
11 this subdivision as of the effective date of the increase announced by the  
12 United States secretary of the treasury.

13 (b) One hundred per cent of the member's compensation for the  
14 limitation year. The compensation limit prescribed in this subdivision does  
15 not apply to any contribution to ASRS for medical benefits after a member's  
16 separation from service, within the meaning prescribed in section 401(h) or  
17 419A(f)(2) of the Internal Revenue Code, that is otherwise treated as an  
18 annual addition.

19 2. Unless paragraph 4 of this subsection applies, for plan years  
20 beginning on or after July 1, 1998, in any one limitation year, the annual  
21 additions credited to ASRS for or on behalf of a member who makes  
22 contributions to ASRS to purchase credited service pursuant to section  
23 38-743, 38-744, 38-745 or 38-922 and with respect to which an irrevocable  
24 election has not been made pursuant to subsection B of this section shall not  
25 exceed the greater of either:

26 (a) The requirements of section 38-769. For the purposes of applying  
27 the limits prescribed in section 38-769 under this subdivision, the accrued  
28 benefit derived from the contributions shall be treated as an annual benefit  
29 and the reduced limit for certain early retirement in section 38-769,  
30 subsection C, paragraph 2 does not apply.

31 (b) Except as provided in paragraph 3 of this subsection, the  
32 requirements of paragraph 1 of this subsection. The contributions shall be  
33 treated as annual additions and any of the member's other annual additions  
34 for the limitation year shall be taken into account. For the purposes of  
35 applying the requirements of paragraph 1 of this subsection under this  
36 subdivision, the percentage of compensation limit in paragraph 1, subdivision  
37 (b) of this paragraph does not apply.

38 3. For plan years beginning on or after July 1, 1998, the requirements  
39 of paragraph 1 of this subsection shall not be applied to reduce the amount  
40 of credited service that may be purchased by an eligible member pursuant to  
41 section 38-743, 38-744, 38-745 or 38-922 to an amount that is less than the  
42 amount of credited service allowed to be purchased pursuant to those sections  
43 on August 5, 1997 without the application of any of the limits prescribed in  
44 this section or section 415 of the Internal Revenue Code. For the purposes

1 of this paragraph, "eligible member" means a person who first becomes a  
2 member of ASRS before July 1, 1999.

3 4. Member contributions to ASRS to purchase credited service pursuant  
4 to section 38-743, 38-744 or 38-922 shall not be made by a member if  
5 recognition of that service would cause a member to receive a retirement  
6 benefit for the same service from ASRS and one or more other retirement  
7 plans. This paragraph does not apply to either of the following:

8 (a) Contributions made by an eligible member as defined in paragraph 3  
9 of this subsection, except that any service purchase by an eligible member is  
10 subject to any other limitations, including limitations on duplicative  
11 service purchase, otherwise provided in this article.

12 (b) Any member contributions with respect to which an irrevocable  
13 election has been made by a member pursuant to subsection B of this section,  
14 except that the service purchase is subject to any other limitations,  
15 including limitations on duplicative service purchase, otherwise provided in  
16 this article.

17 F. If a member's contributions are subject to the limitations of  
18 subsection E of this section, the contributions shall be treated as being  
19 made to a separate defined contribution plan. If the member's contributions  
20 exceed the limits prescribed in subsection E of this section when taking into  
21 account other member and employer contributions to ASRS on behalf of the  
22 member for the limitation year, the amount to be paid by the member shall be  
23 reduced to not exceed the limits prescribed in subsection E of this section  
24 and the remaining amount shall be carried forward to the next limitation  
25 year, unless the limits are exceeded in the next limitation year. If the  
26 limits are exceeded in the next limitation year, the procedure prescribed by  
27 this subsection shall be repeated until all payments have been made.

28 G. If, after the application of subsection F of this section, the  
29 annual additions on behalf of a member exceed the limitations prescribed in  
30 subsection E of this section, ASRS shall dispose of excess amounts by either  
31 of the following:

32 1. Returning to the member any contributions that are made by the  
33 member and that are nondeductible under the Internal Revenue Code.

34 2. Holding the amounts in a suspense account established pursuant to  
35 subsection L of this section and allocating the amounts as either member or  
36 employer contributions for the benefit of the member in the next limitation  
37 year and before any further member or employer contributions are made that  
38 would constitute annual additions made to a defined contribution plan  
39 pursuant to section 415 of the Internal Revenue Code. ASRS shall allocate  
40 contributions as prescribed in this section, and the amount allocated shall  
41 reduce the amount of the member or employer contributions for the limitation  
42 year in which the allocation is made.

43 H. To the extent that a payment under this subsection does not alter,  
44 amend or revoke any one or more currently effective irrevocable elections  
45 made by the member pursuant to subsection B or D of this section, the board

1 may accept contributions made pursuant to section 38-771 or member  
2 contributions for the payment for credited service purchases pursuant to  
3 section 38-738, 38-742, 38-743, 38-744, 38-745 or 38-922 or contributions  
4 made pursuant to section 38-771.01, subsection F, paragraph 4, in whole or in  
5 part, by any one or a combination of the following methods:

6 1. In lump sum payments.

7 2. Subject to the limitations prescribed in sections 401(a)(31) and  
8 402(c) of the Internal Revenue Code and subsection J of this section,  
9 accepting a direct ~~rollover~~ TRANSFER of ANY ELIGIBLE ROLLOVER DISTRIBUTION or  
10 a contribution by a member of an eligible rollover distribution from one or  
11 more:

12 (a) Retirement programs that are qualified under section 401(a) or  
13 403(a) of the Internal Revenue Code.

14 (b) Annuity contracts described in section 403(b) of the Internal  
15 Revenue Code.

16 (c) Eligible deferred compensation plans described in section 457(b)  
17 of the Internal Revenue Code that are maintained by a state, a political  
18 subdivision of a state or any agency or instrumentality of a state or a  
19 political subdivision of a state.

20 3. Subject to the limitations prescribed in section 408(d)(3)(A)(ii)  
21 of the Internal Revenue Code, accepting from a member a rollover contribution  
22 of that portion of a distribution from an individual retirement account or  
23 individual retirement annuity described in section 408(a) or 408(b) of the  
24 Internal Revenue Code that is eligible to be rolled over and would otherwise  
25 be includable as gross income.

26 4. Providing by rule that the contributions may be made in installment  
27 payments over a period of time.

28 I. To the extent that a payment under this subsection does not alter,  
29 amend or revoke any one or more currently effective irrevocable elections  
30 made by a member pursuant to subsection B or D of this section, the board may  
31 accept a direct trustee-to-trustee transfer from retirement programs that are  
32 qualified under section 401(a) or 403(a) of the Internal Revenue Code, an  
33 annuity contract described in section 403(b) of the Internal Revenue Code or  
34 an eligible deferred compensation plan described in section 457(b) of the  
35 Internal Revenue Code for the payment for credited service purchases  
36 pursuant to section 38-742, 38-743, 38-744, 38-745 or 38-922. If a direct  
37 trustee-to-trustee transfer is from a retirement program that is qualified  
38 under section 401(a) of the Internal Revenue Code and that includes a cash or  
39 deferred arrangement described in section 401(k) of the Internal Revenue  
40 Code, the member on whose behalf the transfer was made is not eligible to  
41 retire under section 38-764, subsection I before the date the member attains  
42 fifty-nine and one-half years of age.

43 J. ASRS shall separately account for all amounts rolled over or  
44 directly transferred to ASRS. SUBJECT TO THE LIMITATIONS CONTAINED IN THE  
45 INTERNAL REVENUE CODE APPLICABLE TO THE TYPE OF PLAN FROM WHICH AN ELIGIBLE



1 ROLLOVER DISTRIBUTION IS TRANSFERRED, TO THE EXTENT ANY ELIGIBLE ROLLOVER  
2 DISTRIBUTION THAT IS DIRECTLY TRANSFERRED TO ASRS CONSISTS WHOLLY OR  
3 PARTIALLY OF AMOUNTS THAT WOULD OTHERWISE NOT BE INCLUDED IN THE MEMBER'S  
4 GROSS INCOME IF NOT SO TRANSFERRED, ASRS SHALL SEPARATELY ACCOUNT FOR THE  
5 AMOUNTS SO TRANSFERRED, AND EARNINGS ON THOSE AMOUNTS, INCLUDING SEPARATELY  
6 ACCOUNTING FOR THE PORTION OF THE AMOUNT THAT IS INCLUDABLE IN GROSS INCOME  
7 AND THE PORTION OF THE AMOUNT THAT IS NOT INCLUDABLE IN GROSS INCOME.

8 K. ASRS shall not grant credited service under section 38-738, 38-742,  
9 38-743, 38-744 or 38-922 for contributions made pursuant to subsection H of  
10 this section until the contributions are received by ASRS. ASRS may assess  
11 interest or administrative charges attributable to any installment payment  
12 made pursuant to subsection H, paragraph 4 of this section to purchase  
13 credited service pursuant to section 38-738, 38-742, 38-743, 38-744 or  
14 38-922. The interest or administrative charges shall be added to the amount  
15 of contributions made to ASRS by the member. The interest or administrative  
16 charges shall not be treated as member contributions for any purposes under  
17 this article, and a member or a member's beneficiary does not have a right to  
18 the return of the interest or administrative charges pursuant to any other  
19 provision of this article. Interest assessed pursuant to this subsection  
20 shall be at the rate specified by the board pursuant to section 38-711,  
21 paragraph 2.

22 L. ASRS shall establish a suspense account that conforms with 26 Code  
23 of Federal Regulations section 1.415-6(b)(6) regarding excess annual  
24 additions.

25 M. If the member retires before all payments are made pursuant to this  
26 section, ASRS shall calculate the member's benefits based only on the  
27 payments actually made.

28 N. On satisfaction of the requirements of this section, ASRS shall  
29 adjust the member's credited service history and add any additional service  
30 credits acquired.

31 O. Annual additions on behalf of a member in any limitation year shall  
32 be the sum of:

33 1. The amount of the member contributions made to ASRS to purchase  
34 credited service pursuant to section 38-738, 38-743, 38-744, 38-745 or 38-922  
35 and with respect to which an irrevocable election made pursuant to subsection  
36 B of this section is not in effect.

37 2. The amount of member and employer contributions made to ASRS on  
38 behalf of a member who elected or was deemed to have elected to receive  
39 retirement benefits pursuant to section 38-771 or who is entitled to benefits  
40 pursuant to section 38-771.01, except that, other than as provided in  
41 subsection P of this section, corrective contributions shall be considered  
42 annual additions for the limitation years to which the contributions relate  
43 and interest and gains shall not be considered as annual additions for the  
44 purpose of any limitation prescribed in this article or in section 415 of the  
45 Internal Revenue Code. If the corrective contributions exceed the limit on

1 annual additions for a limitation year prior to the limitation year in which  
2 the corrective contributions are contributed by the employer to ASRS, the  
3 retirement benefit attributable to the excess corrective contributions shall  
4 be treated as an excess benefit and shall be payable to the member as any  
5 other excess benefit is payable pursuant to section 38-774, and the employer  
6 shall pay the excess corrective contributions to the separate unfunded  
7 governmental excess benefit arrangement administered by the board pursuant to  
8 section 38-774.

9 3. Any member or employer contributions made to ASRS or any other plan  
10 that are treated as being made to a defined contribution plan maintained by  
11 an employer of the member.

12 4. Any forfeitures, including any income attributable to forfeitures,  
13 allocated for or on behalf of a member of ASRS or any other plan that are  
14 treated as being allocated under a defined contribution plan maintained by an  
15 employer of the member.

16 P. To the extent any portion of the subject benefits, if treated as  
17 subject to the benefit limitations of section 415(b) of the Internal Revenue  
18 Code, exceed the applicable limitation on benefits pursuant to section 38-769  
19 for the form of distribution, a percentage of corrective contributions and  
20 interest and gains shall be treated as annual additions for the limitation  
21 year in which contributed by the employer to ASRS. This percentage of  
22 corrective contributions and interest and gains shall be equal to the  
23 percentage determined by dividing the subject benefits that exceed the  
24 limitation on benefits pursuant to section 38-769 by the subject benefits.  
25 If the corrective contributions and interest and gains that are treated as  
26 annual additions for the limitation year in which the corrective  
27 contributions and interest and gains are contributed by the employer to ASRS  
28 exceed the limit on annual additions for the limitation year, the retirement  
29 benefit attributable to the excess shall be treated as an excess benefit and  
30 shall be payable to the member as any other excess benefit is payable  
31 pursuant to section 38-774, and the employer shall pay the excess to the  
32 separate unfunded governmental excess benefit arrangement administered by the  
33 board pursuant to section 38-774.

34 Q. Subsection 0 of this section shall be construed and interpreted in  
35 accordance with 26 Code of Federal Regulations section 1.415-6 to the extent  
36 that section is applicable.

37 R. For the purposes of this section:

38 1. "Compensation" has the same meaning prescribed in section 38-769.

39 2. "Corrective contributions" means any contributions that are paid by  
40 an employer pursuant to section 38-771.01, subsection C, paragraph 3 and that  
41 are attributable to employer contributions that should have been made for  
42 prior limitation years.

43 3. "Defined contribution plan" has the same meaning prescribed in  
44 section 38-769.

1           4. "ELIGIBLE ROLLOVER DISTRIBUTION" HAS THE SAME MEANING PRESCRIBED IN  
2 SECTION 38-770.

3           ~~4.~~ 5. "Interest and gains" means employer contributions to ASRS  
4 pursuant to section 38-771.01, subsection C, paragraphs 3, 5 and 6 that are  
5 attributable to earnings and supplemental credits that would have been earned  
6 or added to a member's annuity payment.

7           ~~5.~~ 6. "Limitation year" has the same meaning prescribed in section  
8 38-769.

9           ~~6.~~ 7. "Participating employer" means an employer that participates in  
10 ASRS.

11           ~~7.~~ 8. "Subject benefits" means the retirement benefit received by a  
12 member pursuant to section 38-771.01 minus the sum of the portion of such  
13 retirement benefit attributable to contributions that were made by or on  
14 behalf of the member to the defined contribution program administered by ASRS  
15 for periods before July 1, 1981 and contributions that were made by the  
16 member after June 30, 1981 and that were not picked up as provided in section  
17 414(h)(2) of the Internal Revenue Code.

18           Sec. 2. Section 38-769, Arizona Revised Statutes, is amended to read:

19           ~~38-769.~~ Maximum retirement benefits; termination; definitions

20           A. Notwithstanding any other provision of this article, except as  
21 provided in subsection C of this section, the employer provided portion of a  
22 member's annual benefit payable in the form of a straight life annuity, at  
23 any time within a limitation year, shall not exceed one hundred sixty  
24 thousand dollars or a larger amount that is effective as of January 1 of each  
25 calendar year, is prescribed by the board and is due to any cost of living  
26 adjustment announced by the United States secretary of the treasury pursuant  
27 to section 415(d) of the internal revenue code. The board shall increase the  
28 amount pursuant to this subsection as of the effective date of the increase  
29 as prescribed by the United States secretary of the treasury. Benefit  
30 increases provided in this section resulting from the increase in the  
31 limitations of section 415(b) of the internal revenue code as amended by the  
32 economic growth and tax relief reconciliation act of 2001 shall be provided  
33 to all current and former members who have benefits that are limited by  
34 section 415(b) of the internal revenue code and who have an accrued benefit  
35 under ASRS immediately before July 1, 2001, other than an accrued benefit  
36 resulting from a benefit increase solely as a result of the increases  
37 provided by this section resulting from the increase in the limitations of  
38 section 415(b) of the internal revenue code as amended by the economic growth  
39 and tax relief reconciliation act of 2001.

40           B. Notwithstanding the limitations of subsection A of this section,  
41 the benefits payable to a member are deemed not to exceed the limitations  
42 determined under subsection A of this section if the retirement benefits  
43 payable to the member under this article do not exceed ten thousand dollars  
44 for the limitation year and if an employer has not at any time maintained a  
45 defined contribution plan in which the member has participated.

1 C. The limitations determined under subsection A of this section are  
2 subject to the following adjustments:

3 1. If a member has less than ten years of membership in ASRS, the  
4 maximum dollar limitation determined under subsection A of this section shall  
5 be multiplied by a fraction, the numerator of which is the number of years,  
6 or partial years, of membership in ASRS and the denominator of which is ten.  
7 The reduction provided in this paragraph also applies to the ten thousand  
8 dollar floor limitation provided in subsection B of this section, except that  
9 the reduction applies to years of service with an employer rather than to  
10 years of membership in ASRS. The reduction in this paragraph does not reduce  
11 the limitations determined under subsection A of this section to an amount  
12 less than one-tenth of the limitations as determined without regard to this  
13 paragraph.

14 2. If a member's annual benefit commences before the member attains  
15 sixty-two years of age, the defined benefit dollar limitation applicable to  
16 the member at the earlier age is an annual benefit payable in the form of a  
17 straight life annuity beginning at the earlier age that is the actuarial  
18 equivalent of the defined benefit dollar limitation applicable to the member  
19 at age sixty-two and that is adjusted under paragraph 1 of this subsection,  
20 if required. The defined benefit dollar limitation applicable at an age  
21 before age sixty-two is determined as the lesser of:

22 (a) The actuarial equivalent at that age of the defined benefit dollar  
23 limitation computed using the interest rate specified by the board in section  
24 38-711, paragraph 2 and the mortality table or other tabular factors  
25 prescribed in paragraph 5 of this subsection.

26 (b) The actuarial equivalent at that age of the defined benefit dollar  
27 limitation computed using a five per cent interest rate and the applicable  
28 mortality table prescribed in paragraph 5 of this subsection. Any decrease  
29 in the defined benefit dollar limitation determined in accordance with this  
30 paragraph shall not reflect a mortality decrement if benefits are not  
31 forfeited on the death of the member. if any benefits are forfeited on  
32 death, the full mortality decrement is taken into account.

33 3. If a member's annual benefit commences after sixty-five years of  
34 age, the limitation determined under subsection A of this section applicable  
35 to the member at the later age is the annual benefit payable in the form of a  
36 straight life annuity beginning at the later age that is actuarially  
37 equivalent to the defined benefit dollar limitation applicable to the  
38 participant at age sixty-five and that is adjusted under paragraph 1 of this  
39 subsection, if required. The actuarial equivalent of the defined benefit  
40 dollar limitation applicable at an age after age sixty-five is determined as  
41 the lesser of:

42 (a) The actuarial equivalent at that age of the defined benefit dollar  
43 limitation computed using the interest rate specified by the board as  
44 provided in section 38-711, paragraph 2 and the mortality table or other  
45 tabular factors prescribed in paragraph 5 of this subsection.

1 (b) The actuarial equivalent at that age of the defined benefit dollar  
2 limitation computed using a five per cent interest rate assumption and the  
3 applicable mortality table prescribed in paragraph 5 of this subsection. For  
4 the purposes of this subdivision, mortality between age sixty-five and the  
5 age at which benefits commence shall be ignored.

6 4. If the member's benefit is paid in a form other than a straight  
7 life annuity, the benefit paid may not exceed the actuarial equivalent of the  
8 maximum annual benefit payable as a straight life annuity disregarding the  
9 portion of any joint and survivor annuity that constitutes a qualified joint  
10 and survivor annuity as defined in section 417 of the internal revenue code.  
11 **EFFECTIVE FOR PLAN YEARS BEGINNING FROM AND AFTER JUNE 30, 2004,** actuarial  
12 equivalency under this paragraph shall be determined by the use of an  
13 interest rate assumption equal to ~~the greater of five per cent a year or the~~  
14 ~~rate specified by the board as provided in section 38-711, paragraph 2~~ **ONE OF**  
15 **THE FOLLOWING RATES:**

16 (a) **FOR BENEFITS PAID UNDER ASRS IN A FORM TO WHICH SECTION 417(e)(3)**  
17 **OF THE INTERNAL REVENUE CODE WOULD APPLY IF THAT SECTION OF THE INTERNAL**  
18 **REVENUE CODE WERE APPLICABLE TO ASRS, THE GREATER OF:**

19 (i) **FIVE AND ONE-HALF PER CENT A YEAR.**

20 (ii) **THE RATE THAT PROVIDES A BENEFIT OF NOT MORE THAN ONE HUNDRED**  
21 **FIVE PER CENT OF THE BENEFIT THAT WOULD BE PROVIDED IF THE APPLICABLE**  
22 **INTEREST RATE, AS DEFINED IN SECTION 417(e)(3) OF THE INTERNAL REVENUE CODE,**  
23 **WERE THE INTEREST RATE ASSUMPTION.**

24 (iii) **THE RATE SPECIFIED BY THE BOARD AS PROVIDED IN SECTION 38-711,**  
25 **PARAGRAPH 2.**

26 (b) **FOR BENEFITS PAID UNDER ASRS IN A FORM TO WHICH SECTION 417(e)(3)**  
27 **OF THE INTERNAL REVENUE CODE DOES NOT APPLY IF THAT SECTION OF THE INTERNAL**  
28 **REVENUE CODE WERE APPLICABLE TO ASRS, FIVE PER CENT PER YEAR.**  
29 **IN THE CASE OF ANY MEMBER OR BENEFICIARY RECEIVING A DISTRIBUTION FROM AND**  
30 **AFTER DECEMBER 31, 2003 BUT BEFORE JANUARY 1, 2005, THE AMOUNT PAYABLE UNDER**  
31 **ANY FORM OF BENEFIT SUBJECT TO ADJUSTMENT UNDER THIS PARAGRAPH SHALL NOT,**  
32 **SOLELY BY REASON OF THE INTEREST RATE ASSUMPTIONS CONTAINED IN THIS**  
33 **PARAGRAPH, BE LESS THAN THE AMOUNT THAT WOULD HAVE BEEN PAYABLE HAD THE**  
34 **AMOUNT PAYABLE BEEN DETERMINED USING THE APPLICABLE INTEREST RATE IN EFFECT**  
35 **AS OF THE LAST DAY OF THE PLAN YEAR BEGINNING JULY 1, 2003.**

36 5. For the purposes of adjusting any benefit or limitation under  
37 paragraph 2, 3 or 4 of this subsection, the board shall use the mortality  
38 table prescribed by the United States secretary of the treasury as required  
39 by section 415(b)(2)(E)(v) of the internal revenue code, **WHICH, EFFECTIVE FOR**  
40 **DISTRIBUTIONS WITH ANNUITY STARTING DATES FROM AND AFTER DECEMBER 30, 2002,**  
41 **SHALL BE THE MORTALITY TABLE PUBLISHED BY THE INTERNAL REVENUE SERVICE IN**  
42 **REVENUE RULING 2001-62, AS MODIFIED BY THE INTERNAL REVENUE SERVICE IN**  
43 **REVENUE RULING 2007-67, UNTIL LATER CHANGED OR MODIFIED BY THE INTERNAL**  
44 **REVENUE SERVICE.**

1           D. Subsection C, paragraphs 1 and 2 of this section do not apply to  
2 income received from ASRS as a pension, annuity or similar allowance as a  
3 result of the recipient becoming disabled by personal injury or sickness or  
4 to amounts received from ASRS by beneficiaries, survivors or the estate of a  
5 member as a result of the death of the member.

6           E. Notwithstanding any other provision of this section, the annual  
7 benefit payable under this article may be reduced to the extent necessary, as  
8 determined by the board, to prevent disqualification of ASRS under section  
9 415 of the internal revenue code that imposes additional limitations on the  
10 annual benefits payable to members who also may be participating in another  
11 tax qualified pension or savings plan of this state. An employer shall not  
12 provide employee retirement or deferred benefits if the benefits authorized  
13 by this section and as required by federal law result in the failure of ASRS  
14 to meet federal qualification standards as applied to public pension plans.  
15 The board shall advise affected members of any additional information  
16 concerning their annual benefits required by this subsection.

17           F. If the maximum amount of benefit allowed under section 415 of the  
18 internal revenue code is increased after the commencement date of a member's  
19 benefit due to any cost of living adjustment announced by the United States  
20 secretary of the treasury pursuant to the provisions of section 415(d) of the  
21 internal revenue code, the amount of the monthly benefit payable under ASRS  
22 to a member whose benefit is restricted due to the provisions of section  
23 415(d) of the internal revenue code shall be increased by the board as of the  
24 date prescribed by the United States secretary of the treasury on which the  
25 increase shall become effective. The increase shall reflect the increase in  
26 the amount of retirement income that may be payable under this article as a  
27 result of the cost of living adjustment.

28           G. In determining the adjustments to the defined benefit dollar  
29 limitation authorized by subsection A of this section, the board shall  
30 prescribe a larger defined benefit dollar limitation if prescribed by the  
31 United States secretary of the treasury pursuant to section 415(d) of the  
32 internal revenue code. An adjustment to the defined benefit dollar  
33 limitation prescribed in subsection A of this section is not effective before  
34 the first calendar year for which the United States secretary of the treasury  
35 publishes the adjustment. After it is prescribed by the board, the new  
36 defined benefit dollar limitation applies to the limitation year ending with  
37 or within the calendar year for which the secretary of the treasury makes the  
38 adjustment.

39           H. For the purposes of the limitations prescribed by this section, all  
40 member and employer contributions made to ASRS to provide a member benefits  
41 pursuant to section 38-771 or 38-771.01 and all member contributions that are  
42 not treated as picked up by the employer under section 414(h)(2) of the  
43 internal revenue code shall be treated as made to a separate defined  
44 contribution plan.

1 I. On termination of ASRS the accrued benefit of each member is, as of  
2 the date of termination, fully vested and nonforfeitable.

3 J. If ASRS terminates, the benefit of any highly compensated employee  
4 as defined in section 414(q) of the internal revenue code and any highly  
5 compensated former employee is limited to a benefit that is nondiscriminatory  
6 under section 401(a)(4) of the internal revenue code and as follows:

7 1. Benefits distributed to any of the twenty-five active and former  
8 highly compensated employees with the greatest compensation in the current or  
9 any prior fiscal year are restricted so that the annual payments are no  
10 greater than an amount equal to the payment that would be made on behalf of  
11 the member under a straight life annuity that is the actuarial equivalent of  
12 the sum of the member's accrued benefit, the member's other benefits under  
13 ASRS, excluding a social security supplement as defined in 26 Code of Federal  
14 Regulations section 1.411(a)-7(C)(4)(ii), and the amount the member is  
15 entitled to receive under a social security supplement.

16 2. Paragraph 1 of this subsection does not apply if either:

17 (a) After payment of the benefit to a member described in paragraph 1  
18 of this subsection, the value of ASRS assets equals or exceeds one hundred  
19 ten per cent of the value of the current liabilities, as defined in section  
20 412(l)(7) of the internal revenue code, of ASRS.

21 (b) The value of the benefits for a member described in paragraph 1 of  
22 this subsection is less than one per cent of the value of the current  
23 liabilities, as defined in section 412(l)(7) of the internal revenue code, of  
24 ASRS before distribution.

25 (c) The value of the benefits payable by ASRS to a member described in  
26 paragraph 1 of this subsection does not exceed three thousand five hundred  
27 dollars.

28 K. For the purposes of subsection J of this section, "benefit"  
29 includes loans in excess of the amount prescribed in section 72(p)(2)(A) of  
30 the internal revenue code, any periodic income, any withdrawal values payable  
31 to a living member and any death benefits not provided for by insurance on  
32 the member's life.

33 L. On retirement of a member who was a retired member, who resumed  
34 active membership and who subsequently retires, the limitations of this  
35 section in effect on the member's subsequent retirement apply to the member's  
36 retirement benefit payable as recomputed pursuant to section 38-766. In  
37 addition, the sum of the present value of the member's recomputed retirement  
38 benefits plus the present value of the benefits the member received during  
39 the member's prior retirement shall not exceed the present value of the  
40 limitations in effect on the member's subsequent retirement. The limitations  
41 prescribed in this subsection shall not reduce a member's retirement benefit  
42 below the retirement benefit the member was receiving before the member  
43 resumed active membership. For the purposes of determining present value  
44 under this subsection, the board shall use the actuarial equivalent  
45 assumptions provided in section 38-711, paragraph 2.

1 M. For the purposes of this section:

2 1. Annual additions shall be determined as provided in section 38-747,  
3 subsection 0.

4 2. "Annual benefit" means a benefit, including any portion of a  
5 member's retirement benefit payable to an alternate payee under a qualified  
6 domestic relations order that satisfies the requirements prescribed in  
7 section 414(p)(1)(A)(i) of the internal revenue code and section 38-773,  
8 payable annually in the form of a straight life annuity, disregarding the  
9 portion of a joint and survivor annuity that constitutes a qualified joint  
10 and survivor annuity as defined in section 417 of the internal revenue code,  
11 with no ancillary or incidental benefits or rollover contributions and  
12 excluding any portion of the benefit derived from member contributions or  
13 other contributions that are treated as a separate defined contribution plan  
14 under section 415 of the internal revenue code but including any of those  
15 contributions that are picked up by the employer under section 414(h) of the  
16 internal revenue code, or that otherwise are not treated as a separate  
17 defined contribution plan. If the benefit is payable in another form, the  
18 determination as to whether the limitation described in subsection A of this  
19 section has been satisfied shall be made by the board by adjusting the  
20 benefit so that it is actuarially equivalent to the annual benefit described  
21 in this paragraph in accordance with the regulations promulgated by the  
22 United States secretary of the treasury. In addition, for determining the  
23 annual benefit attributable to member contributions, the factors described in  
24 section 411(c)(2)(B) of the internal revenue code and the regulations  
25 promulgated under the internal revenue code shall be used by the board  
26 regardless of whether section 411 of the internal revenue code applies to  
27 ASRS. The factors described in section 411(c)(2)(B) of the internal revenue  
28 code shall be those factors described under section 417(e)(3) of the internal  
29 revenue code and determined on the basis of the 417(e) mortality table and an  
30 interest rate ~~equal to the annual yield for thirty year treasury constant~~  
31 ~~maturities, as reported in federal reserve statistical release G-13 and H-15,~~  
32 ~~for the third full calendar month preceding the plan year for which the~~  
33 ~~determination is made. For the purposes of this paragraph, "the 417(e)~~  
34 ~~mortality table" means the mortality table that is published by the United~~  
35 ~~States treasury department as the table to be used for the purposes of~~  
36 ~~section 417(e) of the internal revenue code to determine the single sum value~~  
37 ~~of an accrued benefit~~ AS PRESCRIBED IN SUBSECTION C, PARAGRAPHS 4 AND 5 OF  
38 THIS SECTION.

39 3. "Compensation" means the member's earned income, wages, salaries,  
40 fees for professional service and other amounts received for personal  
41 services actually rendered in the course of employment with the employer and  
42 includes amounts described in sections 104(a)(3) and 105(a) of the internal  
43 revenue code, but only to the extent that these amounts are includable in the  
44 gross income of the member. Compensation also includes any elective deferral  
45 as defined in section 402(g)(3) of the internal revenue code and any amount



1 that is contributed or deferred by an employer at the election of a member  
2 and that is not includable in the gross income of the member by reason of  
3 section 125, 132(f)(4) or 457 of the internal revenue code. Compensation  
4 does not mean:

5 (a) Employer contributions to a plan of deferred compensation to the  
6 extent the contributions are not included in the gross income of the employee  
7 for the taxable year in which contributed and any distributions from a plan  
8 of deferred compensation, regardless of whether the amounts are includable in  
9 gross income of the employee when distributed, except that any amount  
10 received by a member pursuant to an unfunded nonqualified plan may be  
11 considered as compensation for the purposes of this section in the year the  
12 amounts are includable in the gross income of the member under the internal  
13 revenue code.

14 (b) Other amounts that receive special tax benefits, such as premiums  
15 for group term life insurance, but only to the extent that the premiums are  
16 not includable in the gross income of the employee, **QUALIFIED TRANSPORTATION**  
17 **FRINGE BENEFITS AS DEFINED IN SECTION 132(a)(5) OF THE INTERNAL REVENUE CODE**  
18 **AND, EFFECTIVE FOR PLAN YEARS BEGINNING FROM AND AFTER DECEMBER 31, 1987, ANY**  
19 **AMOUNTS UNDER SECTION 125 OF THE INTERNAL REVENUE CODE THAT ARE NOT AVAILABLE**  
20 **TO A PARTICIPANT IN CASH IN LIEU OF GROUP HEALTH COVERAGE BECAUSE THE MEMBER**  
21 **IS UNABLE TO CERTIFY THAT THE MEMBER HAS OTHER HEALTH COVERAGE.**

22 4. "Defined benefit dollar limitation" means the dollar limitation  
23 determined under subsection A of this section.

24 5. "Defined benefit plan" has the same meaning prescribed in section  
25 414(j) of the internal revenue code.

26 6. "Defined contribution plan" has the same meaning prescribed in  
27 section 414(i) of the internal revenue code.

28 7. "Limitation year" and "years of service" means the fiscal year.

29 Sec. 3. Section 38-770, Arizona Revised Statutes, is amended to read:

30 **38-770. Eligible rollover distribution; definitions**

31 A. Notwithstanding any other provision of this article that would  
32 limit a distributee's election under this section, a distributee may elect,  
33 at any time and in the manner prescribed by the board, to have any portion of  
34 an eligible rollover distribution paid directly to an eligible retirement  
35 plan specified by the distributee in a direct rollover.

36 B. An eligible rollover distribution may commence less than thirty  
37 days after the notice required under section 402(f) of the internal revenue  
38 code is given to the distributee, provided that both:

39 1. ASRS clearly informs the distributee that the distributee has a  
40 right to a period of at least thirty days after receiving the notice to  
41 consider the decision of whether or not to elect a direct rollover.

42 2. The distributee, after receiving the notice, affirmatively elects a  
43 distribution.

1 C. IN ADDITION TO THE OTHER ELECTIONS PERMITTED IN THIS SECTION,  
2 EFFECTIVE FOR DISTRIBUTIONS MADE FROM AND AFTER DECEMBER 31, 2006, A  
3 DESIGNATED BENEFICIARY OF A MEMBER WHO IS NOT THE MEMBER'S SURVIVING SPOUSE  
4 MAY ELECT, AT ANY TIME AND IN THE MANNER PRESCRIBED BY ASRS, TO HAVE ANY  
5 PORTION OF AN ELIGIBLE ROLLOVER DISTRIBUTION PAID DIRECTLY TO AN ELIGIBLE  
6 RETIREMENT PLAN DESCRIBED IN SUBSECTION D, PARAGRAPH 3, SUBDIVISIONS (a) AND  
7 (b) OF THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "DESIGNATED  
8 BENEFICIARY" HAS THE SAME MEANING PRESCRIBED IN SECTION 38-775.

9 ~~C.~~ D. For the purposes of this section:

10 1. "Direct rollover" means a payment by ASRS to the eligible  
11 retirement plan specified by the distributee.

12 2. "Distributee" means a member, a member's surviving spouse or a  
13 member's spouse or former spouse who is the alternate payee under an  
14 acceptable domestic relations order as defined in section 38-773.

15 3. "Eligible retirement plan" means any of the following that accepts  
16 a distributee's eligible rollover distribution:

17 (a) An individual retirement account described in section 408(a) of  
18 the internal revenue code.

19 (b) An individual retirement annuity described in section 408(b) of  
20 the internal revenue code.

21 (c) An annuity plan described in section 403(a) of the internal  
22 revenue code.

23 (d) A qualified trust described in section 401(a) of the internal  
24 revenue code.

25 (e) An annuity contract described in section 403(b) of the internal  
26 revenue code.

27 (f) An eligible deferred compensation plan described in section 457(b)  
28 of the internal revenue code that is maintained by a state, a political  
29 subdivision of a state or any agency or instrumentality of a state or a  
30 political subdivision of a state and that agrees to separately account for  
31 amounts transferred into the eligible deferred compensation plan from ASRS.

32 4. "Eligible rollover distribution" means distribution of all or any  
33 portion of the balance to the credit of the distributee but does not include  
34 any of the following:

35 (a) Any distribution that is one of a series of substantially equal  
36 periodic payments made not less frequently than annually for the life or life  
37 expectancy of the member or the joint lives or joint life expectancies of the  
38 member and the member's designated beneficiary or for a specified period of  
39 ten years or more.

40 (b) Any distribution to the extent the distribution is required under  
41 section 401(a)(9) of the internal revenue code.

42 (c) Except as provided in this paragraph, the portion of any  
43 distribution that is not includable in gross income. A distribution does not  
44 fail to be an eligible rollover distribution merely because the portion  
45 consists of after-tax employee contributions that are not includable in gross

1 income if the portion is paid only to an individual retirement account or  
2 annuity described in section 408(a) or 408(b) of the internal revenue code,  
3 ~~or to a qualified defined-contribution plan described in section 401(a) or~~  
4 ~~403(a) of the internal revenue code~~ OR AN ANNUITY CONTRACT DESCRIBED IN  
5 SECTION 403(b) OF THE INTERNAL REVENUE CODE that agrees to separately account  
6 for amounts so transferred, AND EARNINGS ON THOSE AMOUNTS, including  
7 separately accounting for the portion of the distribution that is includable  
8 in gross income and the portion of the distribution that is not includable in  
9 gross income.

10 (d) Any distribution that is made due to hardship of the member.

11 Sec. 4. Section 38-775, Arizona Revised Statutes, is amended to read:  
12 38-775. Required distributions; definitions

13 A. This section applies for purposes of determining required minimum  
14 distributions for calendar years beginning on and after January 1, 2006. In  
15 applying the requirements of this section, the following operational  
16 provisions govern:

17 1. Except as provided in the following sentence, the requirements of  
18 this section take precedence over any inconsistent provisions of this  
19 article. The rules of this section shall not restrict any form, calculation,  
20 adjustment or payment of benefit provided under this article in effect on  
21 April 17, 2002, if the form, calculation, adjustment or payment of benefit  
22 satisfied section 401(a)(9) of the internal revenue code based on a  
23 reasonable and good faith interpretation of that section.

24 2. All distributions required under this section shall be determined  
25 and made pursuant to section 401(a)(9) of the internal revenue code and the  
26 regulations that are issued under that section by the United States secretary  
27 of the treasury.

28 3. Notwithstanding this section, other than paragraph 2 of this  
29 subsection, distributions may be made under a designation made before  
30 January 1, 1984, pursuant to section 242(b)(2) of the tax equity and fiscal  
31 responsibility act of 1982 (P.L. 97-248) and the provisions of this article  
32 that relate to that section.

33 B. The member's entire interest shall be distributed, or begin to be  
34 distributed, to the member no later than the member's required beginning  
35 date.

36 C. If the member dies before distributions begin, the member's entire  
37 interest shall be distributed, or begin to be distributed, no later than as  
38 follows:

39 1. If the member's surviving spouse is the member's sole designated  
40 beneficiary, except as provided in paragraph 6 of this subsection,  
41 distributions to the surviving spouse shall begin by December 31 of the  
42 calendar year immediately following the calendar year in which the member  
43 died, or by December 31 of the calendar year in which the member would have  
44 attained seventy and one-half years of age, if later.

1           2. If the member's surviving spouse is not the member's sole  
2 designated beneficiary, except as provided in paragraph 6 of this subsection,  
3 distributions to the designated beneficiary shall begin by December 31 of the  
4 calendar year immediately following the calendar year in which the member  
5 died.

6           3. If there is no designated beneficiary as of September 30 of the  
7 year following the year of the member's death, the member's entire interest  
8 shall be distributed by December 31 of the calendar year containing the fifth  
9 anniversary of the member's death.

10          4. If the member's surviving spouse is the member's sole designated  
11 beneficiary and the surviving spouse dies after the member but before  
12 distributions to the surviving spouse begin, this subsection, other than  
13 paragraph 1 of this subsection, applies as if the surviving spouse were the  
14 member.

15          5. For purposes of this subsection and subsection G, distributions are  
16 considered to begin on the member's required beginning date or, if paragraph  
17 4 of this subsection applies, the date distributions are required to begin to  
18 the surviving spouse under paragraph 1 of this subsection. If annuity  
19 payments irrevocably commence to the member before the member's required  
20 beginning date, or to the member's surviving spouse before the date  
21 distributions are required to begin to the surviving spouse under paragraph 1  
22 of this subsection, the date distributions are considered to begin is the  
23 date distributions actually commence.

24          6. If the member dies before distributions begin and there is a  
25 designated beneficiary, distribution to the designated beneficiary is not  
26 required to begin by the date prescribed in paragraph 1 or 2 of this  
27 subsection as long as the member's entire interest will be distributed to the  
28 designated beneficiary by December 31 of the calendar year containing the  
29 fifth anniversary of the member's death. If the member's surviving spouse is  
30 the member's sole designated beneficiary and the surviving spouse dies after  
31 the member but before distributions to either the member or the surviving  
32 spouse begin, this paragraph applies as if the surviving spouse were the  
33 member.

34          D. Unless the member's interest is distributed in the form of an  
35 annuity purchased from an insurance company or in a single sum on or before  
36 the required beginning date, as of the first distribution, calendar year  
37 distributions shall be made pursuant to subsections E, F and G. If the  
38 member's interest is distributed in the form of an annuity purchased from an  
39 insurance company, distributions shall be made pursuant to the requirements  
40 of section 401(a)(9) of the internal revenue code and the regulations that  
41 are issued under that section by the United States secretary of the treasury.  
42 Any part of the member's interest that is in the form of an individual  
43 account described in section 414(k) of the internal revenue code shall be  
44 distributed in a manner satisfying the requirements of section 401(a)(9) of  
45 the internal revenue code and the regulations that are issued under that

1 section by the United States secretary of the treasury that apply to  
2 individual accounts.

3 E. The following provisions govern the determination of the amount to  
4 be distributed each calendar year:

5 1. If the member's interest is paid in the form of annuity  
6 distributions, payments under the annuity shall satisfy the following  
7 requirements:

8 (a) The annuity distributions shall be paid in periodic payments made  
9 at intervals not longer than one year.

10 (b) The distribution period shall be over a life or lives or over a  
11 period certain not longer than the period described in subsection F or G.

12 (c) Once payments have begun over a period certain, the period certain  
13 shall not be changed even if the period certain is shorter than the maximum  
14 permitted.

15 (d) Payments shall either be nonincreasing or increase only as  
16 follows:

17 (i) By an annual percentage increase that does not exceed the annual  
18 percentage increase in a cost-of-living index that is based on prices of all  
19 items and issued by the bureau of labor statistics.

20 (ii) To the extent of the reduction in the amount of the member's  
21 payments to provide for a survivor benefit on death, but only if the  
22 beneficiary whose life was being used to determine the distribution period  
23 described in subsection F dies or is no longer the member's beneficiary  
24 pursuant to a qualified domestic relations order within the meaning of  
25 section 414(p) of the internal revenue code.

26 (iii) To provide cash refunds of employee contributions on the  
27 member's death.

28 (iv) To pay increased benefits that result from a plan amendment.

29 2. The amount that must be distributed on or before the member's  
30 required beginning date or, if the member dies before distributions begin,  
31 the date distributions are required to begin under subsection C, paragraph 1  
32 or 2, is the payment that is required for one payment interval. The second  
33 payment need not be made until the end of the next payment interval even if  
34 that payment interval ends in the next calendar year. Payment intervals are  
35 the periods for which payments are received, such as bimonthly, monthly,  
36 semiannually or annually. All of the member's benefit accruals as of the  
37 last day of the first distribution calendar year shall be included in the  
38 calculation of the amount of the annuity payments for payment intervals  
39 ending on or after the member's required beginning date.

40 3. Any additional benefits accruing to the member in a calendar year  
41 after the first distribution calendar year shall be distributed beginning  
42 with the first payment interval ending in the calendar year immediately  
43 following the calendar year in which the amount accrues.

1           F. The following provisions govern annuity distributions that commence  
2 during a member's lifetime:

3           1. If the member's interest is being distributed in the form of a  
4 joint and survivor annuity for the joint lives of the member and a nonspouse  
5 beneficiary, annuity payments to be made on or after the member's required  
6 beginning date to the designated beneficiary after the member's death must  
7 not at any time exceed the applicable percentage of the annuity payment for  
8 the period that would have been payable to the member using the table set  
9 forth in question and answer number 2 of section 1.401(a)(9)-6 of the  
10 regulations issued by the United States secretary of the treasury. If the  
11 form of distribution combines a joint and survivor annuity for the joint  
12 lives of the member and a nonspouse beneficiary and a period certain annuity,  
13 the requirement in the preceding sentence applies to annuity payments to be  
14 made to the designated beneficiary after the expiration of the period  
15 certain.

16           2. Unless the member's spouse is the sole designated beneficiary and  
17 the form of distribution is a period certain and no life annuity, the period  
18 certain for an annuity distribution commencing during the member's lifetime  
19 may not exceed the applicable distribution period for the member under the  
20 uniform lifetime table prescribed in section 1.401(a)(9)-9 of the regulations  
21 issued by the United States secretary of the treasury for the calendar year  
22 that contains the annuity starting date. If the annuity starting date  
23 precedes the year in which the member reaches seventy years of age, the  
24 applicable distribution period for the member is the distribution period for  
25 seventy years of age under the uniform lifetime table set forth in section  
26 1.401(a)(9)-9 of the regulations issued by the United States secretary of the  
27 treasury plus the excess of seventy over the age of the member as of the  
28 member's birthday in the year that contains the annuity starting date. If  
29 the member's spouse is the member's sole designated beneficiary and the form  
30 of distribution is a period certain and no life annuity, the period certain  
31 may not exceed the longer of the member's applicable distribution period, as  
32 determined under this paragraph, or the joint life and last survivor  
33 expectancy of the member and the member's spouse as determined under the  
34 joint and last survivor table prescribed in section 1.401(a)(9)-9 of the  
35 regulations issued by the United States secretary of the treasury, using the  
36 member's and spouse's attained ages as of the member's and spouse's birthdays  
37 in the calendar year that contains the annuity starting date.

38           G. The following provisions govern minimum distributions if a member  
39 dies before the date distributions begin:

40           1. Except as provided in subsection C, paragraph 6, if the member dies  
41 before the date distribution of the member's interest begins and there is a  
42 designated beneficiary, the member's entire interest shall be distributed,  
43 beginning no later than the time prescribed in subsection C, paragraph 1 or  
44 2, over the life of the designated beneficiary or over a period certain not  
45 exceeding either of the following:

1 (a) Unless the annuity starting date is before the first distribution  
2 calendar year, the life expectancy of the designated beneficiary determined  
3 using the beneficiary's age as of the beneficiary's birthday in the calendar  
4 year immediately following the calendar year of the member's death.

5 (b) If the annuity starting date is before the first distribution  
6 calendar year, the life expectancy of the designated beneficiary determined  
7 using the beneficiary's age as of the beneficiary's birthday in the calendar  
8 year that contains the annuity starting date.

9 2. If the member dies before the date distributions begin and there is  
10 no designated beneficiary as of September 30 of the year following the year  
11 of the member's death, distribution of the member's entire interest shall be  
12 completed by December 31 of the calendar year containing the fifth  
13 anniversary of the member's death.

14 3. If the member dies before the date distribution of the member's  
15 interest begins, the member's surviving spouse is the member's sole  
16 designated beneficiary and the surviving spouse dies before distributions to  
17 the surviving spouse begin, this subsection applies as if the surviving  
18 spouse were the member, except that the time by which distributions must  
19 begin shall be determined without regard to subsection C, paragraph 1.

20 H. For the purposes of this section:

21 1. "Designated beneficiary" means the individual who is designated as  
22 the member's beneficiary to receive benefits under this article and is the  
23 designated beneficiary under section 401(a)(9) of the internal revenue code  
24 and question and answer number ~~4-1~~ of section ~~1.401(a)(9)-1~~ 1.401(a)(9)-4 of  
25 the regulations issued by the United States secretary of the treasury.

26 2. "Distribution calendar year" means a calendar year for which a  
27 minimum distribution is required. For distributions beginning before the  
28 member's death, the first distribution calendar year is the calendar year  
29 immediately preceding the calendar year that contains the member's required  
30 beginning date. For distributions beginning after the member's death, the  
31 first distribution calendar year is the calendar year in which distributions  
32 are required to begin pursuant to subsection C.

33 3. "Life expectancy" means life expectancy as computed by use of the  
34 single life table in section 1.401(a)(9)-9 of the regulations issued by the  
35 United States secretary of the treasury.

36 4. "Required beginning date" means the date payment of a member's  
37 benefits shall commence, which shall not be later than the April 1 following  
38 the calendar year in which the member attains seventy and one-half years of  
39 age or the calendar year in which the member terminates employment, whichever  
40 occurs later.